
(2006) 01 P&H CK 0208

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1196 of 1980

Umrao Singh and others

APPELLANT

Vs

Gram Panchayat, Jahazgarh

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Citation : (2006) 1 PLJ 638 : (2006) 2 PLR 366 : (2006) 2 RCR(Civil) 221

Hon'ble Judges : Hemant Gupta, J

Advocate : Shri Harvinder Singh, Advocate. None for Respondent, Advocates for appearing Parties

Judgement

Hemant Gupta, J.—The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court on 23.1.1980, whereby it has been held that the Civil Court has no jurisdiction to entertain the present suit.

2. The plaintiffs filed a suit for permanent injunction in respect of construction raised over a part of Abadi Deh. It was the stand of the Gram Panchayat that the land underneath such construction is part of Shamlat deh. Though the learned trial Court decreed the suit by returning a finding that the Civil Court has a jurisdiction to entertain the suit, but the learned first Appellate Court returned a finding that the Civil Court has no jurisdiction to entertain the present suit in view of the provisions of Sections 13 and 13B of the Punjab Village Common Lands (Regulation) Act, 1961 and consequently set aside the judgment and decree passed by the learned trial Court and dismissed the suit.

3. Learned counsel for the appellant has argued that since the learned trial Court has decided Issue No. 4 as a preliminary issue and returned a finding on the question of a jurisdiction, no grievance was made by the Gram Panchayat against the said issue immediately after the same was decided on 7.5.1977 and, therefore, the Gram Panchayat was precluded from raising any such issue in appeal against the final judgment and decree. The said argument is not tenable in law, in terms of the provisions of Order 43, Rule 1A of the Code of Civil

Procedure, which provide that the orders passed by the learned trial Court during the course of proceedings can be made subject matter of challenge in appeal. Therefore, the Gram Panchayat was competent to challenge the finding recorded by the learned trial Court on Issue No. 4 as a preliminary issue in final judgment and decree passed by the learned Court.

4. Admittedly, the question raised is whether the land in dispute is a Shamlat Deh or not. In view of the provisions of the Act, the jurisdiction of Civil Court is barred. Therefore, there is no error of law or fact in the findings of the learned first Appellate Court in holding that the Civil Court has no jurisdiction to entertain the present suit.

In view of the above, I do not find that any substantial question of law arises in the present appeal for the consideration of this Court. Hence, the present appeal is dismissed.